

NATIONAL REGULATORY SERVICES
Spring Compliance/Risk Management Conference
April 21-24, 2003
Westin La Paloma, Tucson, Arizona

**POST-ENRON CORPORATE RESPONSIBILITY
AND RELATED REFORMS**

PART I
OUTLINE OF SARBANES-OXLEY ACT OF 2002:
IMPACT ON BROKER-DEALERS AND INVESTMENT ADVISERS

PART II
OUTLINE GUIDE TO THE
SARBANES-OXLEY ACT OF 2002

by

Paul B. Uhlenhop
Lawrence, Kamin, Saunders & Uhlenhop, L.L.C.
Chicago, Illinois

**National Regulatory Service
Spring Compliance/Risk Management Conference
April 21-24, 2003
Westin La Paloma, Tucson, Arizona**

INDEX

PART I

I.	Research Analyst Conflicts	1
II.	Registered Public Accountant Audits of Broker-Dealers	2
III.	Statute of Limitations for Various Securities Violations Are Extended	2
IV.	Altering or Destruction of Documents or Tampering with Records	2
V.	Increased Criminal Penalties	2
VI.	§15(b)(4)	2
VII.	Whistle Blower Protections.	2
VIII.	Improper Influencing of Auditors’ Opinions (§303).	2
IX.	Bar on Executive Officers and Directors Loans and Credit (§402).	2
X.	Insider Trading During Pension Fund Blackouts (§306(a))	3
XI.	Insider Reporting on a Real Time Basis (§403).	3
XII.	Attorneys Ethical Obligations and Whistle Blowing.	3
XIII.	Corporate Governance/Indirect Impact on Broker-Dealer Corporate Finance Operations and Investment Advisers of Investment Companies. . .	3

PART II

I.	Public Accounting Oversight Board (Title I).	4
II.	Auditor Independence (Title II).	4
III.	Corporate Responsibility (Title III).	5
IV.	Enhanced Financial Disclosures (Title IV)	6

V.	Analyst Conflicts (Title V)	6
VI.	Commission Resources and Studies (Titles VI and VII).	7
VII.	Corporate Fraud Accountability (Title VIII).	7
VIII.	White Collar Crime Penalties (Title IX)	7
IX.	Corporate Tax Returns (Title X)	8
X.	Corporate Fraud and Accountability (Title XI).	8

NATIONAL REGULATORY SERVICE
SPRING COMPLIANCE/RISK MANAGEMENT CONFERENCE
Tucson, Arizona
April 22, 2003

Paul B. Uhlenhop, Esq.¹
Lawrence, Kamin, Saunders & Uhlenhop, L.L.C.

**POST-ENRON CORPORATE RESPONSIBILITY
AND RELATED REFORMS**

**PART I
OUTLINE OF SARBANES-OXLEY ACT OF 2002:
IMPACT ON BROKER-DEALERS AND INVESTMENT ADVISERS**

I. Research Analyst Conflicts (PBU short intro) (JH)

A. Rules

Despite NASD Rule 2711 and NYSE Rule 472, Title V of the Sarbanes-Oxley Act of 2002 (“SOA”) gives the SEC rule making power and directs certain items to be considered (§501)².

B. SOA Issues Regarding Analysts

1. Any compensation received by analysts from an investment banking client would be required to be disclosed.
2. Types of investment banking services to the issuer would have to be disclosed.
3. The definition of “research reports” is broader.
4. There would be a prohibition on retaliation against analysts.
5. There would be additional lock-ups during the offering and lock-up period.
6. The SEC is to look at structural issues, i.e., divorce of research from investment banking into separate organizations.

C. Reg AC Rules 500-505.

D. Proposed Amendments to NASD Rule 2711 and NYSE Rule 427

¹ Mr. Uhlenhop is a member of the bars of the states of Illinois and of New York and is a Senior Member of Lawrence, Kamin, Saunders & Uhlenhop, L.L.C., Chicago, Illinois.

² All section references are to the Sarbanes-Oxley Act of 2002.

II. Registered Public Accountant Audits of Broker-Dealers (PBU)

- A. Section 17(i) and (g) were amended to require broker-dealer to be audited by registered public accountants (“RPAs”) (§205).
- B. RPAs will probably have different auditing and accounting standards impacting broker-dealers (see §§103, 104 and 108).
- C. Partner Rotation and Compensation Reg S-X.

III. Statute of Limitations for Various Securities Violations Are Extended (JH)

- A. Two years from discovery; five years from violation (§804).

IV. Altering or Destruction of Documents or Tampering with Records (JH)

- A. Criminal penalties up to twenty years (§§804 & 1102).
- B. 17a-3 and 4 (electronic communication trap).

V. Increased Criminal Penalties (JH)

- A. 34 Act penalties up to \$25 million and twenty years (§806).
- B. Wire and mail fraud penalties extended up to twenty years (§903).
- C. ERISA penalties extended up to \$500,000 and ten years (§904).
- D. Tampering with documents penalties extended up to twenty years (§1102).

VI. §15(b)(4) (JH)

- A. State fraud as bar.

VII. Whistle Blower Protections (PBU)

- A. Criminal Violation – ten years (§806; §1107).
- B. §806 Public Companies; §1107 all BDs.

VIII. Improper Influencing of Auditors’ Opinions (§303) (PBU)

- A. Very broad SEC rules proposed would include any attempts to change auditors’ accounting treatment by investment bankers or others under certain circumstances.

IX. Bar on Executive Officers and Directors Loans and Credit (§402) (JH)

- A. Impact on cashless exercises.

- B. Opinion letter of 24 firms.
 - C. Other activity.
- X. Insider Trading During Pension Fund Blackouts (§306(a)) ?**
- A. SEC has proposed rules.
- XI. Insider Reporting on a Real Time Basis (§403) (JH)**
- A. Impact on 144 sales.
- XII. Attorneys Ethical Obligations and Whistle Blowing (PBU)**
- A. SEC rule (§307) 205.1 to 5.
- XIII. Corporate Governance/Indirect Impact on Broker-Dealer Corporate Finance Operations and Investment Advisers of Investment Companies**
- A. Management discussion of off balance sheet arrangements, contractual obligations and contingent liabilities and commitments (§401). SEC has proposed rules.
 - B. Certification (§§302, 906).
 - 1. Fairly present.
 - 2. Internal controls.
 - C. Non-GAAP Financial Presentation (§401(b)) proposed SEC rules.
 - D. Audit Committee (§407)
 - 1. Independent.
 - 2. Disclosure of experts (§407).
 - 3. Responsibilities.
 - 4. Reports by officers.
 - 5. Reports by accountants.
 - E. Audit Partner Rotation (§203).
 - F. Conflict of interest.
If CEO, CFO, CAO, controller or similar officer affiliated with the auditor during last one year (§206).

- G. Code of ethics (§406). Chief Executive Officer, Chief Financial Officer, SEC Rules extend further.
- H. Internal control report in company annual reports. See §§404, 302.
 - 1. Management statement of responsibility for establishing and maintaining an adequate internal control structure and procedures for financial reporting.
 - 2. Annual assessment of effectiveness of control. Structure and procedures for financial reporting.
- I. Audit Committee independence (§301).

**PART II
OUTLINE GUIDE TO THE
SARBANES-OXLEY ACT OF 2002**

I. Public Accounting Oversight Board (Title I)

- A. SEC approval of the Board rules. Effective April 26 (§101(d)).
- B. Registration of registered public accountants. Effective 180 days after A above (§102).
- C. Rules for independence auditing and accounting standards (§103).
- D. Inspection of registered public accountants (§104).
- E. Board investigations and sanctions (§105).
- F. Foreign accounting firms (§106).
- G. SEC oversight of board (§107).
- H. Setting accounting standards (§108).
- I. Funding of board (§109).
Funding will be from issuers and publicly held companies.

II. Auditor Independence (Title II)

- A. Services defined to be outside the scope of permitted audit service. Effective January 26 (§201).
Public Accounting Oversight Board (PAOB) rules to come.
- B. Audit services pre-approval by Audit Committee. Effective January 26 (§202).
- C. Audit partner rotation (every five years). Effective January 26 (§203).
- D. Specifies specific things which the auditors must report to Audit Committee.
Auditor report to Audit Committee. Effective January 26 (§204).
- E. Various changes with respect to reporting by accountants to the Audit Committee of violations (§205). Also amends requirement for BDs to be audited by registered independent public accountant.
- F. Audit conflict if former employee of auditor within the last year is CEO, CFO, CAO or similar position. Effective January 26 (§206).

III. Corporate Responsibility (Title III)

- A. Public companies must have audit committees and independence. Effective January 26 (§301).
SEC has proposed rules, disclosure required.
- B. Certification of annual and quarterly reports. Effective August 29, 2002 (§302).
 - 1. CEO and CFO.
 - 2. Based on knowledge, no untrue material statements or omissions of material facts necessary to make the statements not misleading.
 - 3. Fairly presents in all material respects.
 - 4. Responsibility of assigning officers. Laundry list dealing with internal controls. Evaluation of their effectiveness. Disclosure to audits and audit committees.
- C. Improper influence on audits. Effective April 26 (§303).
The SEC has promulgated proposed rules extending this to all private entities.
- D. Disgorgement of CEO and CFO compensation following restatement of financial statement. Effective July 31, 2002
- E. Officer and director bars for violations. Effective July 31, 2002 (§305).
- F. Prohibition of insider trading during pension fund blackouts. Effective January 26 (§306).
- G. Rules of professional responsibility for attorneys. Effective January 26 (§307).
The SEC has promulgated rules extending far beyond the SOA requirements.
Would require whistle blowing for most broker-dealers.
- H. Use of disgorgement funds obtained by SEC for investors. Effective July 31, 2002 (§308).

IV. Enhanced Financial Disclosures (Title IV)

- A. Disclosure and reports (§401).
 - 1. Corrective adjustments disclosure. No date.
 - 2. Pro forma and off balance sheet disclosures. Effective January 26.
- B. Bars of personal loans and credit to directors and executive officers. Effective July 31, 2002 (§402).

- C. Faster reporting of transactions by officers and directors. Effective August 29, 2002 (§403).
- D. Management assessment of internal controls. No deadline (§404). SEC has proposed extensive rules.
- E. Code of ethics. Effective January 26 (§406). SEC has proposed rules beyond SOA.
- F. Audit committee expert disclosure. Effective January 26 (§407). SEC has proposed rules.
- G. SEC review of issuer reports. Effective July 31, 2002 (§408).
- H. Real time disclosure. No deadline (§409). SEC has promulgated and in some cases have in effect rules.

V. Analyst Conflicts (Title V)

- A. SEC authorized and directed regarding certain disclosures. Effective July 30, 2003 (§501)
 - 1. Different than NASD Rule 2711 and NYSE Rule 471.
 - 2. Any compensation received by analyst from investment banking revenues would need to be disclosed.
 - 3. Types of investment banking services by the issuer would need to be disclosed.
 - 4. Definition of research reports is broader.
 - 5. No retaliation would be permitted against an analyst.
 - 6. Blackout periods during offering and lock ups are possible under rules to be proposed by the SEC.
 - 7. SEC has authority to impose structural changes, i.e., spin off investment banking or analyst operations.

VI. Commission Resources and Studies (Titles VI and VII)

Titles VI and VII deal with funding the SEC and studies by the SEC, none of which have deadlines.

VII. Corporate Fraud Accountability (Title VIII)

- A. Criminal penalties for document alteration. Effective July 31, 2002 (§802).

- B. Securities violation debts are non-disclosable in bankruptcy. Effective July 31, 2002 (§803).
- C. Statute of limitations for fraud extended. Effective July 31, 2002 (§804).
2 years after discovery, 5 years after violation.
- D. Review of federal sentencing guidelines mandated (§805).
- E. Protection of whistle blowers. Effective July 31, 2002 (§806).
- F. Criminal penalties for defrauding publicly held companies in connection with issuance of their securities. Effective July 31, 2002 (§807).

VIII. White Collar Crime Penalties (Title IX)

- A. Title (§901).
- B. Attempts and conspiracies definition expanded. Effective July 31, 2002 (§902).
- C. Mail and wire fraud penalties extended from five to twenty years. Effective July 31, 2002 (§903).
- D. ERISA penalties extended up to \$500,000 and ten years. Effective July 31, 2002 (§904).
- E. Amendment to sentencing guidelines (§905).
- F. Criminal penalties for improper certification of reports. Effective July 31, 2002 (§906).
Up to twenty years and \$5 million.

IX. Corporate Tax Returns (Title X)

- A. Sense of the Senate Regarding the Signing of Corporate Tax Returns by Chief Executive Office (§101) stating the view of the Senate that all corporate tax returns should be signed by the Chief Executive Officer.

X. Corporate Fraud and Accountability (Title XI)

- A. Tampering of records and documents. Effective July 31, 2002 (§1102).
Penalties up to twenty years.
- B. SEC authority to freeze compensation of officers and directors. Effective July 31, 2002 (§1103).
- C. Further sentencing guideline increases. Effective July 31, 2002 (§1104).

- D. SEC authority to bar for violation of 10b-5. Effective July 31, 2002 (§1105).
- E. 34 Act penalties. Effective July 31, 2002 (§1106).
Up to \$25 million and twenty years.
- F. Criminal violation to retaliate against whistle blowers. Effective July 31, 2002 (§1107).
Up to ten years.

E:\PBU\WINWORD\PBU\NRS\2003\Post Enron Corporate Responsibility-Sarbanes-Oxley Act.doc